



# Oral History

Of  
David Flemming  
Interviewed by Sandy Tucker

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**Name:** David Flemming  
**Date of Interview:** April 25, 2016  
**Location of Interview:** Loganville, Georgia  
**Interviewer:** Sandy Tucker

**Years worked for Fish and Wildlife Service:** 33 years

**Offices and Field Stations Worked, Positions Held:** Office Endangered Species Consultation and Recovery Branch, Washington D.C.

**Colleagues and Mentors:** John Spinks, Dave Wesley, Marshall Jones, Bob Jacobsen, Paul Opler

**Most Important Issues:** Mississippi Sandhill Crane I-10; Furbish lousewort in Boston; snail darter; manatees; dealing with politics.

**Brief Summary of Interview:** Prior to working for the Fish and Wildlife Service, Mr. Flemming worked for Department of Environmental Resources at McConnell's Mill State Park in Pennsylvania. When he first came to the Service, his job was in the Consultation and Recovery Branch of the Office of Endangered Species in Washington D.C. where he helped develop policies and guidelines. He spent his entire 33 years working for the Fish and Wildlife Service in some aspect of endangered species even though he had different job titles and positions; he feels one always had to walk the line between the people who wanted everything listed and those who wanted to know why something was being listed.

**Keywords:** history, biography, employee (USFWS), endangered species, consultation teams, TVA, Dicky fish, politics



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SANDY: Dave, you came to the Fish and Wildlife Service first in the Washington office, is my understanding, and you started working on Endangered Species Act Program. Tell me what you remember about that sort of crazy part of our history.

DAVE: Okay, I started with the Fish and Wildlife Service in the Washington office in the Office of Endangered Species in 1979. I worked in the Consultation and Recovery Branch at that time doing consultations and some review of recovery activities. They had a series of teams set up where you were in contact with a particular region around the country and you did work in coordination with those regional offices at that time and any nationwide consultations.

SANDY: So you were like the regional liaison, is that what you meant?

DAVE: That's correct, yeah, a regional liaison; it was a team of generally two or three people representing each region.

SANDY: So the ESA was passed in '73, so '79, that's still pretty new.

DAVE: Yeah, at that time they just had two major amendments to the Act in '78, and then in '79 I believe is when the consultation guidelines came out and that was really a big part of what we were doing. And reviewing those national consultations like OCS sales, and—

SANDY: Outer Continental Shelf Oil and Gas Sales?

DAVE: That's correct. And also anything that were done with other offices in Washington like the Office of Permits; all the wildlife permits were done out of the permit office at that time. So any consultations and reviews of those were done in the Washington office with then contact with the regional, or at that time area offices, for any feedback in relationship to those permits and then they were issued out of the office in Washington.

SANDY: So some of the, is this right, you guys were doing the whole consultation whereas now the field typically does?

DAVE: Yeah, and at that time there were also the listing branch down the hall that did all the listing of species for—

SANDY: For the whole country?

DAVE: For the whole country were done out of the Washington Office at that time.

SANDY: Wow. So this is all brand new, so how did you know what to do? I mean we've been doing it years.

DAVE: Well, a lot of it was driven by, even at that time, court cases and guidance solicitor's opinions, and guidance that then we developed at that time in the Washington Office of how you just do things and then served to be



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a lot of the training and so forth that you did at NCTC; the development and generation of it was all driven by those legal documents at that time and how we did our business.

SANDY: Who were some of the people that you were figuring all this out with? So you were brand new out of, well, you had worked a little bit in where, in other places?

DAVE: Prior to coming to the Fish and Wildlife Service, I worked for the Department of Environmental Resources with the state of Pennsylvania in McConnell's Mill State Park; I was a naturalist there before coming to the Fish and Wildlife Service.

SANDY: So you had a little bit of environmental kind of work?

DAVE: Right, and, of course, then the years in school, both my bachelor's and master's degree.

SANDY: Right, right, yeah. So you're there with who else, was it a lot of people, a few people doing all this?

DAVE: Yeah, there were quite a few people; there were, at that time, seven regions and there were three people on each of the consultation teams, so it was quite a large branch and a branch chief and so forth. And some of the people went on to long and illustrious careers in the Service, and my first boss was Marshall Jones.

SANDY: What was his title then, the head of Endangered Species Program?

DAVE: No, no, he was a Consultation Team Coordinator. He reported to the branch chief, who at that time was Dave Wesley, the head of the seven consultation teams, and whole Consultation and Recovery Branch was headed by Bob Jacobsen, and John Spinks was the chief of the entire Office of Endangered Species, that included the listing branch, and Paul Opler was the chief of the listing branch. There, all the listings were done by species experts on the taxa that the act covered.

SANDY: So the listing experts were Service employees?

DAVE: Service employees, they were all Service employees.

SANDY: Okay.

DAVE: It was quite a large office at that time.

SANDY: Sounds like it; I didn't have any idea it was that big. So the Service was seeking out people who, at that time, we listed the bigger, sort of more charismatic things first, right, I mean like the alligator.

DAVE: Well, some of the species were brought on initially just from previous acts and so forth like bald eagles and peregrine falcons and so forth, but then a lot of the other species were listed through time and they were all done by the folks in the listing branch, with input



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from the few people in the regions, and the few people in the area offices. And that really depended on what region you were working with of how much expertise was at the various levels. Some regions, there may be one endangered species person in an area office and then others may have been a staff of two or three. And then in the regional office, it wasn't that much different, there were just a small handful of people in each of the regional offices.

SANDY: So nowadays we have policies that guide, you know, prioritize which critters or plants we'll try to list first or whatever. How did you guys make those kinds of decisions?

DAVE: That was developed, and okay, we realized we only have a few people and a limited amount of money and how we're going to do things. Those priority lists were developed by the staff there in the Washington office of whether it's a full species, a sub-species; all that was developed there. Everything we tried to do, because we were new and developed these policies and guidelines, some of them were developed before I got there but it was all based on sound science and what the interpretation was of the act, so it was based on sound legal advice and science. So today if someone would talk about which species you work on, a full species with a high threat and recoverability; those were the type of criteria we came up with and how you do it.

SANDY: So some common sense stuff that we can take for granted now, you guys laid it in black and white.

DAVE: Yeah, or we made it up and as we went, kind of flying by the seat of your pants in that we had to have something because here we were given the responsibility to implement this piece of legislation and do it in a timely and in a manner that we could undergo all the scrutiny and of people that were wanting us to protect everything or protect nothing where we kind of walk down the middle and walk that fine line.

SANDY: So you mention the word scrutiny, so talk a little bit about, well, maybe first talk about internal scrutiny or questioning because this was a new program and it was taking dollars away from old programs.

DAVE: Well, we weren't really taking money away from old programs; this money was allocated from Congress implementing the Endangered Species Act.

SANDY: Because the law was passed, gotcha.

DAVE: Because the law was passed. And we then developed the regulations and part of it with on consultation was just going out and giving presentations to agencies, what their responsibilities were and what they were required to do by law and why they had to come to us to consult under Section 7 of the Endangered Species Act. And I know that eventually when I got to the region,



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that was a big thing that each of the area offices did, to make a list of all the agencies that they had in their area and they went out and they gave presentations to them that if you're undertaking these types of activities, you need to make an assessment of what your impacts are on endangered species. Will your activity affect these species? If you affect them then you need to initiate consultation.

SANDY: Right. So you mentioned the area office, so how did the ESA Program flow then from Washington office to an area office? I don't know the timing of that.

DAVE: Well, there were some things—

SANDY: Were the area offices there pre-ESA?

DAVE: I believe so.

SANDY: Okay.

DAVE: I believe so. And like I said, it varied from region to region how many people they had there or whether everything was done in the regional office at that time. But it was very similar to; the Washington office really had the control at that time of the purse strings, of the money because the area supervisors reported to the regional directors.

SANDY: To the regional directors.

DAVE: Right, to the regional directors.

SANDY: But the money came from Washington.

DAVE: But the money came from Washington. And that's why, initially, things like Section 6, money that went to the states initially because there was only a little bit of money and only went to charismatic megafauna.

SANDY: Right, right, because there wasn't much to go around.

DAVE: There wasn't much to go around. So they basically, once a state qualified for Section 6 agreement, not everybody got money.

SANDY: Right, right. So it sounds like the work load sort of got spread out.

DAVE: It was spread out to a certain degree; a lot of it was just beginning so there wasn't the workload of what you have today. So it was really a top down driven system, not as what has evolved today as a bottom up driven system, which in reality works much better but at that time, when you're just starting out, you just have a little bit of money, you're just beginning the process, you're getting questions both internally and externally about why you're even worrying about some of these species and activities; it probably worked better at that time. And then through time, things were shifted—

SANDY: Shifted down to the field stations and the regions.

DAVE: Where the work really is done.



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SANDY: So talk a little bit about, can you recall; nowadays ESA just seems to always get riled up in politics.

DAVE: Even then, there were controversial issues; the snail darter was all—

SANDY: That's the one that interfered with the big TVA dam.

DAVE: TVA dam, so that was controversial and settled in the Supreme Court. There were the Furbish Lousewort up in northeast up in Boston.

SANDY: Furbish Lousewort.

DAVE: Yeah.

SANDY: It's a plant, right?

DAVE: Yeah, it was a plant and it dealt with an oil refinery in the northeast. The Mississippi Sandhill Crane in I-10 in the intersection was another controversial project and really led to some of the guidance, particularly where we were taking this.

SANDY: So they were controversial because of why, what made them controversial?

DAVE: Well, like on Mississippi Sandhill Crane I-10. The controversy there was, okay, you build the intersection, then have all kinds of development in and around the intersection. So it was those secondary and cumulative impacts and how that

comes into play. And there was a court case said yes, we can take that into consideration when we do a consultation.

SANDY: And that was sort of a new *aha* moment, wasn't it?

DAVE: Yeah, that was brand new, and then became very useful in future consultations.

SANDY: So then the lousewort, you said it was some sort of oil refinery or something?

DAVE: Oil refinery or something.

SANDY: Again, what was the controversy?

DAVE: It was where they were placing it and you've got the listed species there.

SANDY: Was the controversy because people thought, oh, this is important so that doesn't matter, or what?

DAVE: Yeah, well, they needed the oil for heating oil and other things in the northeast and they were going to build a new refinery there and here's this plant sitting right on the site where they want to develop it.

SANDY: Some things never change. Okay, then the snail darter, remind me what that one was; I know it was a dam.

DAVE: Yeah, it was a dam and they were going to flood out the portions of the Little Tennessee and Tennessee



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River and inundate the only known, at that time, the only known locations of the snail darter.

SANDY: So again, people were faced, maybe for some of the first times in our country's history, right, with this save the rare critter versus—

DAVE: Another TVA dam, which at that time, there had already been a whole series of dams and whether it was there. What really became then, through time, is that snail darters were then found in some other streams in and around that portion of the Tennessee and I think even northern Alabama, and were a little more wide ranging in what they thought and originally in just one location.

SANDY: So controversy from the outside, were there many battles inside?

DAVE: Yeah, I think some of the more established programs in the Service, there were often questions raised of why we were worrying about some of these non-descript, lesser known species; it's not the charismatic megafauna, it's not the grizzly bears, the bald eagles, or the manatees and why do you even worry about these.

SANDY: What was the term, Dicky fish?

DAVE: Yeah, Dicky fish, there was one time we were questioned by a fisheries program, why are we even in wonderg worrying about—

SANDY: About the Dicky fish.

DAVE: The Dicky fish.

SANDY: Yes, I heard that one too. So let's see, so we had the area offices that dealt with ESA issues, sometimes they would get field station people involved, I suppose. So how long do you think that maybe was, maybe ten years or so but it was mostly Washington handling everything.

DAVE: Well, it was really from the beginning in '73, probably to sometime in the 80's where there was still a vast majority of things handled at the Washington Office and the regional level. And then there were some things that were done at the field and that really, like I said, varied from region to region.

SANDY: I think I can remember, I'll interject, 1987, my field station getting handed consultation responsibilities.

DAVE: Yeah, but it wasn't in the mid-80's, probably in '81, or '82 they did away with the area offices.

SANDY: Okay.

DAVE: And I don't know what they did in all the regions, but in Region 4, on the southeast, we established endangered species field offices in the same locations where there had been area offices. And they really took on all the responsibilities of consultation, listing, and recovery activities.

SANDY: All of the field stations devoted to endangered species.





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DAVE: Right, and then covered several state areas. Today, now there's more than one field office in every state, but at that time we had four offices in Asheville, North Carolina, Jacksonville, Florida, Jacksonville, Mississippi, and Boquerón, Puerto Rico.

SANDY: Jackson, Mississippi, yeah, yeah. So that was the four that did all the ESA work for the southeast region.

DAVE: Right, right.

SANDY: That's a good workload.

DAVE: Yeah, tremendous workload. And then in the regional office there were certain things handled there; jeopardy opinions were finalized there, recovery plans were finalized and signed off by; well originally, they had to go to Washington for the Director to sign off on recovery plans; that was eventually shifted then to regional directors could sign off on them. And there were certain other things that eventually some of the permit program was done in Washington shifted to the regional office.

SANDY: Was that mostly a workload sort of an issue where there was so much?

DAVE: Well, really, the permit issue became was that when people applied for wildlife permits, it took so long for the Washington office, the process became a problem; it was a workload factor.

SANDY: So that's how we got the, well the ESA permits, did we always have the Migratory bird people doing their thing?

DAVE: No, Endangered Species people only did ESA permits.

SANDY: Okay, there's another story.

DAVE: Yeah, it was all done by Endangered Species staff, and then there was some shifting around the work load. There was one time they created, for a short period of time, created a branch of permits in Region 4 where they took a few endangered species people and the migratory bird people and they did all the permits together.

SANDY: In Washington, or where?

DAVE: No, in the region.

SANDY: Oh, in the regional office.

DAVE: In the region, they had a permit office. Well, it actually worked very well and was very efficient, but politics in the region and nationally and so forth, migratory birds thought that they had lost their—

SANDY: Independence or something?

DAVE: Independence or kind of notoriety, or they were being swept under the carpet and so they drifted back to migratory birds, which were part of the national wildlife refuge system. And then eventually some of the, overall, all the permits then went with them with





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then just feedback from endangered species.

SANDY: So, were you in D.C., where was the split between the international stuff? So I know you need a permit if you're going to send native pitcher plants from the southeast.

DAVE: That was still; there were two branches in the permit office when I started. One that did all the native permits and then a group that did all the international activities and they covered CITES and in particular those pitcher plants you're talking about.

SANDY: So even if the species was a U.S. one, another country, okay.

DAVE: They may be covered by CITES also and they would an import and export permit; that was all done out of Washington. And all the international listings were done out of Washington too. Initially in the listing branch and then some of it went to the International Affairs.

SANDY: Right, that seems sort of like sort of; how do you think that came to be? It would seem to me that you could have managed that program, similar to the domestic critters, because your expert might be in south Florida on, I don't know, whatever. You may not have had any knowledge of that.

DAVE: Yeah, I don't know.

SANDY: I just know Marshall was in that.

DAVE: Yeah, he was involved in that and part of that probably goes back to his time before becoming Director when he was the head of International Affairs. And a lot of that really ties back to, some of those species that were put on the list with little knowledge other than basic biological information about the species and some of the trade type things, not to the level and scrutiny and detail that native species are listed and all the things that you know and put together. But even in listing, through time, that has changed; I mean, there were species put on the list initially by some of the listing branches because species experts or peers provided information or told them that the species needed to be put on the list and that there was little review or scrutiny and there may not have been public hearings and that type of thing; species early on were just put on the list.

SANDY: They were just put on the list, isn't that funny.

DAVE: And over time that evolved into a very detailed and scientific process of status surveys and knowing the status of the species and where they're located and then often times public hearings and public meetings and getting the input from the public and conservation groups and the states.

SANDY: So let's talk a little bit about how decisions were made, maybe earlier on in the ESA program still. You were in the Washington Office and then you moved to the regional office and you



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saw what, you probably saw 25 years of the ESA program personally, about that?

DAVE: Well, I would say it was probably even more than that, I was always involved in the Endangered Species Program for all 33 years.

SANDY: Well, there you go then.

DAVE: That I was involved even though I had different titles and jobs through that time, there was always some level of endangered species that I got involved with, almost said dragged into, but involved with.

SANDY: Probably that too.

DAVE: I think early on, one of the differences of what I saw from when I started to when I finished was the degree at which politics came into play in the Endangered Species Program.

SANDY: In the decisions?

DAVE: Making decisions, or even in just day-to-day activities. When I started out, virtually there was no, little or none, in the programs. It was all based on what the act said, what the biology said, and what common sense said to how you move forward. As things evolved through time, it seemed that politics seemed to creep into day-to-day activities.

SANDY: And you were saying politics, tell me what year?

DAVE: I mean just on decisions, is that: no, we're not going to do that because

it's going to cause this particular problem or there that was litigation and lawsuits.

SANDY: So people would be unhappy, people, whoever the people.

DAVE: Somebody once said, in dealing in the Endangered Species Program, you have to walk down the line. You have people that want you to protect everything and do everything there on one side and have other people saying don't even worry about this, they're going to die off anyhow. So as long as people are chewing on both sides of your derriere as you walk down that fine line, you were doing a good job. You probably irritated people on both sides, but it was all legal and biologically sound and you moved on, and you could stand a bit of chewing on both sides you went through the process. Then issues of politics: while this congressional delegation doesn't like this or this state doesn't like this, even though it's biologically sound, those types of things started to creep in from day-to-day and impacting people at the Washington level, the regional level, and the field level.

SANDY: And you saw more of that, is that what you're saying.

DAVE: More of that through time.

SANDY: So in a circumstance where you had politics, some import involved, did you see decision-making related to that be about the same through time, change or depended on the person?



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DAVE: I think it changed through time and it became a heavier influence through time and the ultimate decision that somebody had to make it, either the field or the regional level or the Washington level. One time it was something that may not really have been considered all that heavily, was taken into consideration because it was all part of the administrative record, and public record, but through time, it became more and more a weighted factor.

SANDY: The politics.

DAVE: The politics of it.

SANDY: In the final decision.

DAVE: In the final decision. You know, you saw that yourself, it was a great asset to have a public affair's person in the field. One time we didn't have that and yet it became a great asset and it also, to a certain degree, could have been detrimental as those are things that were taken into consideration one time, and in an earlier time maybe it wasn't maybe all that—

SANDY: So what if some people are mad.

DAVE: Yeah, so what, I mean that happens.

SANDY: Can't make everybody happy.

DAVE: No, in fact, like I said, when you walk that line you often make nobody happy.

SANDY: Right, right. So manatees is a species that gets a lot of people riled up and I know you spent a lot of time with manatees; funny I should think of that after we were just talking about politics. So you were involved with manatees over a number of years.

DAVE: Yeah, I was.

SANDY: Talk about that some, because my sense is they just about from the beginning have been sort of a sensitive area for, certainly for the state of Florida, Save the Manatee Club.

DAVE: Well, Florida at that time, was the center of where they were located; now the population has grown and they're spread out to some of the other states as the population has grown. So it's always been an issue; it was protected by the state of Florida before it was protected by the federal government. And it's a species that didn't have any other problems other than man-induced mortalities. I mean, for a while there were mortalities from structures and loss in cold, since they do depend upon either warm water flowing from power plants or natural springs, but the structure issue on gates and flood control structures, once that was taken care of, then it still is a man-induced issue; over 90% of the population have scars from one or more impacts with man or boats in particular. There is a misconception for a while that it was just all big barges that were doing that.

SANDY: I didn't know that.



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DAVE: Yeah, and that there were barges crushing them in the shallow water end or with propellers from the tugs, so that was a misconception; all boats are potential problems for manatees. Then we found other things like speed zones and protecting the warm springs are very beneficial to manatees. As a result, and once we did some of that, some of the populations started coming back, and now there's the proposed rule to down list them to a threatened species. Along with a lot of education on that over time and there was a manatee interagency committee of state agencies, federal agencies, conservation groups, and boating industry coming together and a lot of give and take, gnashing of teeth to get that information out there on what things were and what were not problems.

SANDY: There's sort of a watershed event you were telling me about a little bit earlier. What brought the big, like there was a big lawsuit?

DAVE: Yeah, we had a tremendous lawsuit where we weren't implementing the act; it was brought together by Save the Manatee Club and a number of other conservation agencies against the Service to establish protection areas and speed zones.

SANDY: They sued the Service because they felt like—

DAVE: We were not doing it in a quick enough manner and the recovery plan needed to be revised and we had not

done NEPA and a whole series of things. And it was real ugly.

SANDY: So the lawsuit, we lost, the Service lost?

DAVE: Yes, the Service lost. In fact, we were given a court mandated deadline to get certain things done within that period of time or the Secretary of Interior would have been found in contempt.

SANDY: Holy smokes! So what was your role in that and how did you guys work through that? That sounds pretty dicey.

DAVE: I was given the regional coordination responsibility to make this happen.

SANDY: The things that the judge had said had to happen, okay.

DAVE: As the judge said and I was the one to track it, and facilitate it. So we had several people in the regional office working full-time on this; we basically had the entire Jacksonville field office, no matter what their role, they were all involved in the manatee lawsuit. And this required that we get the recovery plan revised and updated with measureable recovery goals in there, and we did that, met that. We did the NEPA on the determinations and established speed zones throughout the state, which included then holding public hearings throughout the state.



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SANDY: Wow. That was all part of court decree?

DAVE: Court mandated, deadline, and all this had to be done within a certain period of time and we got it done.

SANDY: Well, how did the judge say you'll get the money for all this?

DAVE: It didn't matter, we were mandated by the courts to get it done; we just did it. The endangered species money paid for it all, whether it was consultation recovery, probably some listing dollars and everything else; it was all the dollars that we had to get this done.

SANDY: What was the time frame that you're talking about? I mean, I know there's probably protractive court involvement, but from when you sort of saw what your task was going to be until—

DAVE: It varied on the different aspects. The recovery plan was a very short period of time to get it revised and updated with measureable, identifiable criteria with goals and objectives for recovery; that was relatively quick. We had a certain amount of time, I don't remember how many months it was, to get the proposal done and then of course once we had the proposal out there, the year to get the final—

SANDY: Proposal for the protection areas?

DAVE: For the protection areas.

SANDY: Gotcha. And these were throughout Florida?

DAVE: Throughout all of Florida.

SANDY: So then the court allowed you that typical year between proposed rule and final—

DAVE: I believe so.

SANDY: So how long was this really intensive time you were talking about where you were, you in Jacksonville was writing documents? Because you were drafting the rule and you were fixing recovery plan—

DAVE: Six months or so.

SANDY: So it was pretty contracted.

DAVE: Six months to a year.

SANDY: Yeah, it wasn't just like a two week thing, this was long process.

DAVE: But this had started before when we had first the litigation, what we proposed were speed zones and protection areas on a few priority areas and we had proposed a schedule of how we would do this through time in the rest of the State based on dollars. Well, when we went to present that to the Director and the Assistant Secretary, they said, "No, pick your top three and do that." So we went back to that in court and that's when we got our head chopped off —

SANDY: The judge was not happy.



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DAVE: --and the judge said, "No, do it all, I want it all done," because that's what the litigants came back with, doing the three top ones was not the highest priority to them, and that's where we got killed in court.

SANDY: Was that another one of those sort of pragmatic versus best for the species kind of thing, to pick the three?

DAVE: That was —

SANDY: Politics.

DAVE: --politics.

SANDY: Politics, okay.

DAVE: Politics decision under that administration.

SANDY: Gotcha, yeah.

DAVE: It was kind of our, I'll admit, it was a shock to us when they said, "Do three and we want it done in a week."

SANDY: A week, so prepare the proposed rule.

DAVE: Yeah, for those three in a week. So that was working two weekends and all week.

SANDY: What was that, about the '90's, do you remember the year when that was or approximately? Maybe I can kind of remember this myself, having been in the region.

DAVE: I was going to say it may have been at least 2000 something.

SANDY: Yeah, I was going to say maybe early 2000's.

DAVE: Yeah.